

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0761-20**

KATHY ANDREWS-WILLIAMS,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,**

Respondent-Respondent.

Argued March 7, 2022 – Decided May 13, 2022

Before Judges Fasciale and Sumners.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury.

Samuel M. Gaylord argued the cause for appellant (Gaylord Popp, LLC, attorneys; Samuel M. Gaylord, on the brief).

Porter Strickler, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Donna Arons, Assistant

Attorney General, of counsel; Porter Strickler, on the brief).

PER CURIAM

Petitioner Kathy Andrews-Williams, a former Pennsauken High School teacher, appeals the final agency decision by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund denying her application for accidental disability retirement benefits. We affirm.

I

Andrews-Williams was employed by the Pennsauken Board of Education (PBOE) as a Pennsauken High School Spanish teacher from 2001 until 2008. Each school day, she taught five class periods and had a duty period,¹ a prep period,² and a lunch period. Each period was forty-two minutes long.

On May 12, 2006, Andrews-Williams was standing in her classroom doorway around 7:20 a.m. when a student ran out of the classroom, shoving her in the process and causing her back pain. She went to the school nurse and was later treated by two orthopedists, who prescribed muscle relaxers, pain killers,

¹ During her duty period, she monitored students' behavior, e.g., making sure they ate lunch and were not disruptive.

² During her prep period, she planned lessons, graded papers, called parents, and talked to counselors.

and physical therapy. Without interruption, she worked through the end of the school year and over the summer taught a part-time class at Rutgers University.

After having physical therapy prescribed by Dr. David Clements, an orthopedic spine surgeon, she returned to work part-time in September 2006, until taking an extended medical leave in May 2007 due to her injuries from the May 2006 incident. She remained on extended medical leave through the rest of the school year as well the entire 2007-2008 school year.

While Andrews-Williams was on medical leave, the PBOE denied her request for reasonable accommodations as well as an extension of her leave into the next school year, 2008-2009. She filed an application for accidental disability retirement benefits on April 23, 2008, effective in July 2008. She alleged she had a "permanent spinal injury causing numbness in feet, back and leg pain and difficulty walking" due to the May 2006 incident.

Sometime thereafter, Andrews-Williams moved to Washington, D.C. Although she stopped teaching in high school, she held various part-time adjunct college teaching positions at Rutgers University³ and colleges in the DC-metropolitan area. She testified that unlike her daily high school regimen

³ She taught at Rutgers University while temporarily living with family members in New Jersey.

of teaching five classes and performing other responsibilities, her college positions only required teaching two to three classes where she could sit and accommodate her lower back ailment.

On January 8, 2009, the Board found Andrews-Williams was "totally and permanently disabled" but denied her ordinary disability retirement benefits because she "lack[ed] the requisite number of years of service." The Board also denied her request for accidental disability retirement, determining that her total and permanent disability was the result of a "pre-existing disease alone or a pre-existing disease" that was "aggravated or accelerated" by her work effort.

Andrews-Williams appealed, and the Board transmitted the matter to the Office of Administrative Law (OAL) for an administrative law judge to conduct a contested hearing. While the matter was pending, the Board reviewed the matter de novo based on an independent medical examination by Dr. Lawrence Barr, D.O. At its meeting on December 3, 2009, the Board determined that Dr. Barr's report

reaffirms its original decision to deny [a]ccidental disability retirement benefits to . . . Andrews-Williams. However, the Board has now determined that she is not considered totally and permanently disabled from the performance of her job duties. The Board further found that her disability was not a direct result of the [i]ncident described as occurring on May 12, 2006. The

Board also determined that [her] alleged disability is not the direct result of a traumatic event.

In October 2011, Andrews-Williams started seeing Dr. Joseph O'Brien. In May 2012, Dr. O'Brien performed a lumbar spinal fusion on her.

For reasons that are unclear in the record, the first of three OAL hearings did not take place until October 2015, with the last held in November 2018. Andrews-Williams testified, as did her neurology expert, Dr. Melissa Carran, M.D. The Board presented the testimony of its orthopedic surgery expert, Dr. Barr, and neurology expert, Dr. Jonathan Amy, M.D.

To substantiate her contention that the May 2006 incident entitled her to accidental disability retirement benefits, Andrews-Williams testified that when teaching at Pennsauken High School following the incident, she developed pain and discomfort in her hip area, back, and feet when standing or walking for a half hour or longer. She stated that if she took breaks or stopped and "[sat] for awhile, the pain w[ould] go away, and" she would get up and "walk some more." High school teaching was not possible because it involved "basically doing a lot of standing" and she would not be able to move around the classroom or maintain classroom discipline. Although she was unaware of a written policy requiring her to stand and keep moving while teaching, she felt "[a]n administrator,

principal, assistant principal—those who evaluate teachers," preferred that she stand and move around in the classroom.

Dr. Carran, a professor of neurology at Cooper Medical School of Rowan University and board certified in neurology and psychiatry, testified regarding her neurological examinations and treatment of Andrews-Williams for multiple sclerosis (MS) since 2003. She did not attribute Andrews-Williams's maladies to MS but rather to the May 2006 incident. Dr. Carran did not perform an orthopedic examination of Andrews-Williams's lumbar spine, nor did Andrews-Williams present the testimony of a medical expert in orthopedics to substantiate her claim.

Dr. Barr, board certified in orthopedic surgery, testified concerning his 2009 independent medical examination of Andrews-Williams. He opined that upon examining her and reviewing her medical records through 2012, her claimed disability in not being able to perform her job as a high school teacher was not related to the May 2006 incident but was caused by degenerative orthopedic issues. Dr. Barr also highlighted that his examination found no clinical evidence of radiculopathy as Andrews-Williams claimed.

Dr. Amy, board certified in neurology, conducted an independent medical examination of Andrews-Williams for the Board in 2013. He opined that upon

examining her and reviewing her medical records up through his examination, her complaints after the May 2006 incident were indicative of orthopedic issues but did not exacerbate her MS nor disable her from performing her duties as a high school teacher. He believed her complaints of numbness, tingling in the arms and legs, and general dizziness were all common MS symptoms that her medical records indicated she experienced prior to the May 2006 incident.

Upon considering the documentary evidence and the parties' witnesses, the ALJ issued an initial decision finding the Board's witnesses were credible in proving "that the [May] 2006 incident did not directly result in [Andrews-Williams's] total and permanent disability from the duties of her teaching position." The ALJ stated that "despite a claimed spinal injury, [Andrews-Williams] chose to proceed without the testimony of an orthopedic expert," noting that Dr. Carran, a neurology expert, "was not consistent concerning whether the [May] 2006 [in]cident caused an orthopedic injury or whether [Andrews-Williams's] resulting complaints were related to an exacerbation of [her] MS." The ALJ also found Dr. Carran's testimony "was more conclusory and less informed than the testimony presented by [the Board's] experts." The ALJ gave more weight to the opinion of the only orthopedic expert, the Board's Dr. Barr, who stressed that based on his examination, and

the absence of any "evidence in [Andrews-Williams's medical] records or tests[,] . . . the 2006 [incident did not] cause[] the conditions of which she complained."

Applying the principles set forth in Richardson v. Bd. of Trs., Police and Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007), Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 186 (1980), and Russo v. Teachers' Pension & Annuity Fund, 62 N.J. 142, 147 (1973), the ALJ reasoned:

[Andrews-Williams] has not met her burden of proving that the 2006 incident was the cause of a disability which left her permanently and totally unable to perform her job responsibilities. [The Board's] orthopedic expert's opinion that her spinal condition was the result of degenerative processes rather than trauma from the 2006 incident was persuasive. Further, on the issue of whether the incident could have exacerbated her MS and caused her pain and mobility complaints, both [the Board's] expert in neurology and her own treating neurologist, in her report and years of case notes, negated that possibility. [Andrews-Williams] therefore has not proven by a preponderance of the evidence that she is entitled to accidental disability benefits.

[Emphasis added.]

On October 1, 2020, the Board adopted the ALJ's initial decision to uphold its denial of accidental disability retirement benefits to Andrews-Williams.

II

Our scope of review of an administrative agency's final determination is limited. In re Herrmann, 192 N.J. 19, 27 (2007). A "strong presumption of reasonableness attaches" to the agency's decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993)). The burden is upon the appellant to demonstrate grounds for reversal. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002); see also Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (stating that "[t]he burden of showing the agency's action was arbitrary, unreasonable or capricious rests upon the appellant").

Andrews-Williams argues the ALJ's initial decision and the Board, through its adoption of the decision, failed to apply the correct legal standard and did not grant "due discretion" to Dr. Carran's opinion as the treating doctor. She asserts,

[t]he medical evidence, [her and Dr. Carran's testimony], and the [Board's] reject[ion] that there were any other [positions] available, allows this [c]ourt to determine she . . . sustained her burden of proof and [is] . . . permanently and totally disabled from performing her regular and assigned [teaching] duties.

She further maintains:

The diagnostic evidence, the operative report, and the testimony of the treating neurologist as supported by the State's orthopedist provides this [c]ourt with sufficient evidence that she sustained her burden of proof demonstrating the May 12, 2006 incident was the substantial cause of her disability, and therefore, this [c]ourt can grant her accidental disability pension reversing the Board's initial decision.

According deference to the Board's fact-finding, we conclude its decision is neither "arbitrary, capricious, or unreasonable, or . . . lacks fair support in the record." Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9-10 (2009) (citing Herrmann, 192 N.J. at 27-28).

In Richardson, the Court held that an officer who seeks accidental disability retirement benefits must prove:

1. that he [or she] is permanently and totally disabled;
2. as a direct result of a traumatic event that is
 - a. identifiable as to time and place,
 - b. undesigned and unexpected, and
 - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
4. that the disability was not the result of the member's willful negligence; an[d]

5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[192 N.J. at 212-13 (emphasis added).]

Over twenty-five years before Richardson, the Court in Gerba held that for a member of the Public Employees' Retirement System to qualify for accidental disability benefits, he or she need not show that the traumatic event is the "sole or exclusive cause of the disability," but that the alleged traumatic event is "the direct cause, i.e., the essential significant or substantial contributing cause of the disability." 83 N.J. at 187.

We are satisfied "that the evidence and the inferences to be drawn therefrom support" the Board's decision. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 588 (1988). The ALJ found that Andrews-Williams "ha[d] not met her burden of proving that the [May] 2006 incident was the cause of a disability which left her permanently and totally unable to perform her job responsibilities." (Emphasis added). The ALJ did not specifically state that Andrews-Williams failed to prove the incident was "the direct cause, i.e., the essential significant or substantial contributing cause of [her alleged] disability"—the language specified in Gerba. (Emphasis added). We are satisfied, however, that standard was applied as the ALJ acknowledged this

principle and stated she was applying it to her factual findings, subsequently adopted by the Board in denying Andrews-Williams accidental disability retirement.

In sum, there is credible evidence in the record that Andrews-Williams's injuries were not the direct result of the May 2006 incident but from orthopedic degeneration and MS, and that she was not permanently disabled from teaching in high school. The Board agreed with the ALJ's decision to give greater credit to its medical experts. Andrews-Williams has not demonstrated that the Board's action was arbitrary, unreasonable, or capricious. Hence, we will not disturb the Board's denial of her application for accidental disability retirement benefits.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION